



A gulp of "FOOD "for thought

Comprehensive Environmental Response, Compensation and Liability Act

(CERCLA)

Superfund Legislation

The term Superfund gets its name from the Hazardous Substance Superfund, originally established by congress to fund investigation and remedial activities undertaken at designated sites.

The term remedy or remedial action as defined in CERCLA is taken to mean "*those actions consistent with the permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment.*"

Historical and Statutory Notes: appears at the end of each citation and takes a substantial amount of research however marks the actual or expressed intent of the legislative body as it debated and approved the particular section of law referenced. It is this intent that causes the most complex challenges of law in that it is subject to further interpretation. to gain a comprehensive understanding of the actual intent of any given section of CERCLA one must turn to the "Historic and Statutory Notes" for guidance.

Perhaps the most important section of CERCLA as it relates to the present work in Libby begins at 9604 under the heading "RESPONSE AUTHORITIES" this section is reduced to a handout provided us by the EPA. This response authority is completely defined within the law and in as much follows a pre-designed procedure including;

1) A short narrative on Presidential Authority.

" No remedial investigation, or feasibility study (RI/RS) shall be authorized except on a determination by the President that the party is qualified" that party is the Environmental Protection Agency.

2) Removal Action

3) Limitations on response

ETC>

Reference to **Operation and maintenance** comes on page 1090 and continues to 1095.

Reference to the establishment and directives of **Agency for Toxic Substances and Disease Registry**. (ATSDR) comes on page 1095 and ends at page 1099.

Reference to **Acquisition of property** is addressed on page 1099.

Sample language: *" The President is authorized to acquire, by purchase, lease, condemnation, donation, or otherwise, any real property or any interest in real property that the President in his discretion determines is needed to conduct a removal action under this chapter."*

At section 9617 page 1131 entitled "Public participation" both the planning and public response activities begin.

Sample Language: **Proposed Plan:** *" Before adoption of any remedial action to be undertaken by the President, by a State, or by any other person under section 9604,9606,9620,or 9622 of this title, the President or State, as appropriate, shall take both of the following actions:*

- 1) Publish a notice and brief analysis of the proposed plan and make such plan available to the public.*
- 2) Provide a reasonable opportunity for submission of written and oral comments and an opportunity for a public meeting at or near the facility at issue regarding the proposed plan and regarding and proposed findings under section 9621(d)(4) of this title relating to cleanup standards.. The President or State shall keep a transcript of the meeting and make such transcript available to the public.*

Following this important section comes the creation of LATAG

(e) Grants for technical assistance

(1) Authority

Subject to such amounts as are provided in appropriations Acts and in accordance with the rules promulgated by the President, the President may make grants available to any group of individuals which may be affected by a release or threatened release at any facility which is listed on the National Priorities List under the National Contingency Plan. Such grants may be used to obtain technical assistance in interpreting information with regard to the nature of the hazard, remedial investigation and feasibility

study, record of decision, remedial design, selection and construction of remedial action, operation and maintenance or removal action at such facility.

(2) Amount

The amount of any grant under this subsection may not exceed \$50,00 for a single grant recipient. The President may waive the \$50,00 limitation in any case where such waiver is necessary to carry out the purposes of this subsection. Each grant recipient shall require, as a condition of the grant, to contribute at least 20 percent of the total of costs of technical assistance for which such grant is made. The president may waive the 20 percent contribution requirement if the grant recipient demonstrates financial need and such waiver is necessary to facilitate public participation in the selection of remedial action at the facility. Not more than one grant may be made under this section with respect to a single facility, but the grant may be renewed to facilitate public participation at all stages of remedial action.

Section 9621 page 1144 " Cleanup standards"

(a) Selection of remedial action

Sample Language: " In evaluating the cost effectiveness of proposed alternative remedial actions, the President shall take into account the total short -and long -term costs of such actions, including the costs of operation and maintenance for the entire period during which such activities will be required.

(b) General rules

Sample Language: Remedial actions in which treatment which permanently and significantly reduces the volume, toxicity or mobility of the hazardous substances, pollutants, and contaminants is a principle element, are to be preferred over remedial actions not involving such treatment.

Sample Language: The President shall conduct an assessment of permanent solutions and alternative treatment technologies that, in whole or in part, will result in a permanent and significant decrease in the toxicity, mobility or volume of the hazardous substance, pollutant or contaminate. In making such an assessment, the President shall specifically address the long term effectiveness of various alternatives.

(d) Degree of cleanup

Sample Language: (1) Remedial actions selected under this section or otherwise required or agreed to by the President under this chapter shall attain a degree of cleanup of hazardous substances, pollutants, and contaminants released into the environment and control of further release at a minimum which assures protection of human health and the environment. (underline added) Such remedial actions shall be relevant and appropriate under the circumstances presented by the release or threatened release of such substance, pollutant, or contaminate.

Sample Language: (2) (A) With respect to any hazardous substance, pollutant or contaminate that will remain onsite, etc.

Sample Language: following ---ongoing--- a level or standard of control for such hazardous substance or pollutant or contaminant which at least attains such legally applicable or relevant and appropriate standard, requirement, criteria, or limitation.

For reference: Solid Waste Disposal Act
Toxic Substances Control Act
Montana State Law